

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF OKLAHOMA**

SFF-TIR, LLC; STUART FAMILY  
FOUNDATION, INC.; ALAN STUART  
2012 GST FAMILY TRUST; STUART  
2005 GST FAMILY TRUST;  
CELEBRATION, LLC; ANURAG  
AGARWAL; PETER BUCKLEY; VINCENT  
SIGNORELLO and RODNEY M. REYNOLDS,

Plaintiffs,

vs.

No. CIV 14-0369 JB/FHM

CHARLES C. STEPHENSON, JR.;  
CYNTHIA A. FIELD; PETER BOYLAN, III;  
LAWRENCE FIELD;  
CYPRESS ENERGY PARTNERS-TIR, LLC;  
CEP CAPITAL PARTNERS, LLC;  
CYPRESS ENERGY HOLDINGS, LLC and  
TULSA INSPECTION RESOURCES, LLC,

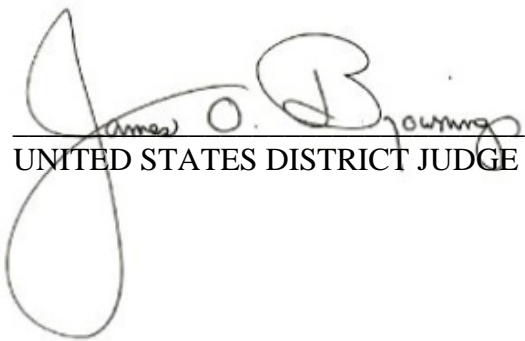
Defendants.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on the Defendants' Bench Brief on Proposed Instruction No. 23 of Court's Fourth Proposed Jury Instructions of September 5, 2017, filed September 8, 2017 (Doc. 403)("Objection"). The Defendants object to the last sentence of proposed Instruction No. 23 of the Court's Fifth Proposed Jury Instructions, filed September 8, 2017 (Doc. 406)("Jury Instructions"): "Reliance of a price determined in a thinly traded, illiquid, market is evidence of a price's unfairness." Jury Instructions at 47. According to the Defendants, that sentence "transform[s] factually-dependent evidentiary comments of various Chancery judges into absolute, unequivocal statements of law." Objection at 1.

The Defendants are correct. While the Delaware Court of Chancery has said that “reliance on a price determined in a thinly traded, illiquid, market is evidence of a price’s unfairness,” Gesoff v. IIC Indus. Inc., 902 A.2d 1130, 1154 (Del. Ch. 2006)(Lamb, V.C.), those statements, when read in context, indicate at most that market price in a thin market is an unreliable indicator of fair value, see Gesoff v. IIC Indus. Inc., 902 A.2d at 1154 (remarking that the merger price of a company’s shares was unfair because -- among other things -- it was lower than the share’s market price even though the market was illiquid); Dunmire v. Farmers & Merchants Bancorp., 2016 WL 6651411, at \*10 (Del. Ch. Nov. 10, 2016)(declining to rely on a guideline company valuation because it based its valuation on the stock prices of companies that were not actively traded). A market price is not unfair just because it is unreliable; a market price that exceeds a stock’s fair value is not reliable, but it is not unfair vis-à-vis the seller.

**IT IS ORDERED** that the objection in Defendants’ Bench Brief on Proposed Instruction No. 23 of Court’s Fourth Proposed Jury Instructions of September 5, 2017, filed September 8, 2017 (Doc. 403), is sustained.



UNITED STATES DISTRICT JUDGE

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